



## Filing Receipt

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**PROJECT NO. 51830**

<b>REVIEW OF CERTAIN RETAIL</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>ELECTRIC CUSTOMER PROTECTION</b>	<b>§</b>	
<b>RULES</b>	<b>§</b>	<b>OF TEXAS</b>

**COMMENTS OF OCTOPUS ENERGY**

Evolve Retail Energy LLC d/b/a Octopus Energy (Octopus Energy), REP License #10262, files these comments in response to the Proposed Amendments to 16 Texas Administrative Code (TAC) §§ 25.43, 25.475, 25.479, and 25.498 and addition of 16 TAC §24.499 published the Public Utility Commission of Texas (Commission or PUCT) in the Texas Register on August 13, 2021.<sup>1</sup>

**Executive Summary**

1. The Commission should not prohibit all indexed retail products for residential and small commercial customers. Competition and innovation have been hallmarks of the ERCOT market since it opened the retail electric market to competition in 1999. Squashing all products that provide rational market signals to residential and small commercial customers will undermine opportunities for these customers to choose for themselves what pricing structures best meet their needs, reduce the development of load management incentives, and ultimately undermine efforts to improve reliability in the electricity market.
2. The Commission should clarify §25.475(e)(2)(C) to avoid the unintended result that the revised rules could mandate that a REP extend the term of an above-market long-term product without the consent of the customer by failing to give the required expiration notice.
3. The Commission should clarify §25.475(e)(3)(A) to require a REP to provide on a monthly basis clear notice of the price applicable to a default renewal product before that product goes into effect for a customer each month. A monthly notice should be required to ensure that customers clearly understand the price for energy they will be charged the following month if they fail to act. For customers who have been lulled into a set-it-and-forget-it mind set with their electricity service, the monthly reminders about their upcoming expenses will encourage them to make an affirmative choice for the best product to meet their needs. This would impose very little cost on retailers yet would provide large value to consumers through complete and frequent transparency.

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<sup>1</sup> 46 TexReg 4937 (August 13, 2021).

## **COMMENTS**

### **Introduction**

Octopus Energy started as a Retail Electric Provider (REP) in ERCOT in 2019 as Evolve Energy. In 2020, Octopus Energy, based in the UK, purchased Evolve Retail Energy, and the Commission approved the company's name change just after Winter Storm Uri on February 22, 2021. Octopus Energy's US offices are located in Houston, Texas. Globally, Octopus Energy provides service in the UK, Germany, Japan, Australia, and Spain. While it has only been around 5 years, Octopus Energy serves over 2 million customers globally and has been significantly expanding its operations in ERCOT. Octopus Energy has projects around the world to increase grid flexibility, leading to lower overall costs and stronger energy markets.

Following Winter Storm Uri, Octopus Energy has continued to expand its operations in ERCOT. After the bankruptcy of Brilliant Energy, we onboarded thousands of Brilliant Energy customers, honored all of their prior contracts, and increased their purchase of renewable energy to 100% without any additional costs to the customers. We also launched our SuperPower Savings Program where we pay our customers to manage their usage during times of grid stress.

As part of its global mission, Octopus Energy prides itself on exceptional customer service. In response to Winter Storm Uri, Octopus Energy was the first energy provider to voluntarily announce a Bill Forgiveness program, which helped its customers recover due to fluctuations in wholesale prices on the Texas energy grid. Subsequently, Octopus Energy was named the 2020 Retail Energy Provider of the Year by Energy Marketing Conferences. Octopus Energy's commitment to customer service is further demonstrated by its 4.8-star rating with approximately 58,000 reviews on trustpilot.com.

### **Responses to Commission Questions**

2. Do the acknowledgement of risk requirements in proposed §25.475(c)(3)(G) and §25.475(j) provide adequate customer protections for residential and small commercial customers that enroll in indexed retail electric products and retail electric products that allow for the pass-through of ancillary service charges? If not, should these products be prohibited for residential and small commercial customers?

The Commission should not prohibit all indexed retail products for residential and small commercial customers. Competition and innovation have been hallmarks of the ERCOT market since it opened the retail electric market to competition in 1999. Squashing all products that provide rational market signals to residential and small commercial customers will undermine opportunities for these customers to choose for themselves what pricing structures best meet their needs, reduce the development of load management incentives, and ultimately undermine efforts to improve reliability in the electricity market.

Octopus Energy was actively engaged in the legislative process relating to House Bill 16.<sup>2</sup> It was clear from the filing of the bill and throughout its consideration that proposed Utilities Code Section 39.110 was aimed at preventing aggregators, brokers, and REPs (like Griddy) from offering to or enrolling residential and small commercial customers in products that pass through to these customers prices that are 100% indexed to the wholesale real-time market.<sup>3</sup> There was no legislative intent indicating that the Commission should prohibit all indexed products, though. Moreover, there has been no showing that all indexed products should be banned from ERCOT because they are without merit and harmful to residential and small commercial customers. To the contrary, Octopus Energy's experience is that indexed products, if implemented in a manner that protects customers from the highest prices, enable residential and small commercial customers to enjoy the lowest rates available in the ERCOT market, and, in times of higher wholesale prices,

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<sup>2</sup> Act of May 12, 2021, 87<sup>th</sup> Leg., R.S., ch. 132 (HB 16) (hereinafter "HB 16").

<sup>3</sup> House State Affairs Committee Report, Bill Analysis, Background and Purpose, Tex. C.S.H.B. 16, 87<sup>th</sup> Leg., R.S. (Mar. 23, 2021); and Senate Research Center, Bill Analysis, Author's/Sponsor's Statement of Intent, Tex. C.S.H.B. 16, 87<sup>th</sup> Leg., R.S. (Apr. 22, 2021).

these products provide clear market signals to reduce consumption. Octopus Energy believes it implemented its wholesale index rate plan correctly because, unlike other retail electric providers with wholesale index retail products during Winter Storm Uri, Octopus Energy voluntarily capped its customers' exposure to the high wholesale rates during the extended period of high wholesale prices in order to protect them from potentially high bills. This is similar to the approach Octopus Energy takes in other countries in which it offers wholesale index retail products. This customer-friendly approach provides Octopus Energy a competitive advantage over other providers to the benefit of Octopus Energy's retail customers and should be encouraged, rather than prohibited, in the ERCOT market. For these reasons, wholesale-indexed products with customer protections are in the customer's interest since they can provide powerful price signals to reduce energy usage when prices are the most expensive. Octopus believes that a customer-centric and innovation-centric REP can be a champion of these products, even though they reduce the excessive profits some generators otherwise would enjoy.

Octopus Energy is one of the few REPs that have made demand response a central tenant in the services we offer to our customers. Octopus Energy has significant software engineering that enables us to control new and evolving technology, including smart thermostats, appliances, electric vehicles, rooftop solar, and even energy storage. We use the combination of that software and technology to help our customers benefit from low energy prices most of the time and reduce their consumption during higher-priced periods and reduce stress on the grid. We also allow customers who do not have a smart thermostat to participate by texting us a picture of their manually adjusted thermostat. The capabilities of Smart Meter Texas allow us to intelligently verify actions by customers with ease, regardless of the technology owned by the customer. As Octopus Energy expands its presence in ERCOT, we increasingly will enable our customers to be

partners with the Commission and ERCOT to ensure reliable operations in ERCOT rather than just being “load” that must be served as if it has no price elasticity. In fact, residential customers may have more demand flexibility than large industrials who may require intense coordination and pre-planning among departments to execute a single demand response event.

Through its unique approach to working with our customers, Octopus Energy has actively encouraged its customers to engage in economic demand response. Our wholesale indexed product is called OctoFlex. With this product, Octopus Energy has helped our customers save 20-40% off the average price of electricity by enabling them to respond to higher prices by using technological solutions similar to those that large industrial customers can obtain from the competitive market. Getting price signals to customers through exposure to wholesale prices or even by paying customers to reduce their usage at key times both encourage economic demand response that directly benefits the participating customers and also benefits the entire grid by reducing demand at critical times. These price signals encourage customers to reduce usage when grid stress is high and give customers a large savings when they buy during the cheapest times. This contrasts with traditional demand response because it allows for very cheap prices to be passed directly on to customers during the “off-peak” hours.

Unfortunately, as a result of the enactment of Utilities Code §39.110 by HB 16 during the recent legislative session, the opportunity to continue to offer wholesale indexed products to new residential and small commercial customers will be prohibited effective September 1, 2021. However, implemented in a customer-friendly manner with appropriate safeguards in the manner that Octopus Energy does, it may be possible that other index-based plans could continue to be instrumental to growing economic demand response within these customer classes. Octopus Energy encourages the Commission to be open to alternate products that provide appropriate

signals to encourage customers to be more flexible in their energy consumption, so long as these products have appropriate consumer protections included.

### **Comments on Proposed Amendments to Commission Rules**

#### ***§25.475. General Retail Electric Provider Requirements and Information Disclosures to Residential and Small Commercial Customers.***

**§25.475(e)(2)(C)**: The Commission should clarify proposed §25.475(e)(2)(C) regarding how long a REP must continue to serve a customer under the pricing terms of a fixed rate product in the event the REP makes an error in providing the expiration notice during the last third of the customer's fixed rate contract period. In the event of shorter duration contracts, the extended service may not be significant – potentially up to three months for a one year term product. But, based on the provisions of proposed §25.475(e)(2)(C), in the event of longer, multi-year term products, extending service at the same fixed rate as the original term to ensure notice equal to the last one-third of the original term could require an extension of more than one year for a contract with an initial term of more than three years. In the event the price charged pursuant to the terminating product is now above current market pricing, this automatic extension may actually be contrary to a customer's best interest. In order to balance provision of sufficient expiration notice and the potential that an extension of the current contract may not be in a customer's best interest, the Commission should revise proposed §25.475(e)(2) to read as follows:

- (C) If a REP does not provide the required notice of the expiration of a customer's contract and the customer does not select another retail electric product before expiration of the contract term, the REP must continue serving the customer under the terms of the fixed rate contract until sufficient expiration notice is provided **[and] during a period of up to three months or until** the customer selects another retail electric product.

**§25.475(e)(3)(A)**: The Commission should clarify proposed §25.475(e)(3)(A) to require a REP to provide on a monthly basis clear notice of the price applicable to a default renewal product

before that product goes into effect for a customer each month. As proposed, this subsection does not require a REP to provide the customer *any notice* of the product price even though it may vary monthly.

Octopus Energy is deeply committed to customer transparency as the cornerstone to a well-functioning competitive market. Octopus Energy strongly supports the Commission's proposed changes to the notice a REP must provide to a customer regarding the termination of a fixed rate product. During the Legislative Session, legislators expressed concern that customers can be surprised by a rate change when their fixed rate contract expires and they are switched to a variable rate plan as a default service. This concern is not unfounded, as reflected in the Commission's statistics showing that billing issues are the primary customer complaint.<sup>4</sup> Ensuring that a customer receives clear notice regarding the termination of a fixed rate product and the charges that the customer will pay in the event they do not select another retail product is critical to helping customers avoid enrollment in a default renewal product with higher rates than they might expect.

Many other retailers have talked about a business model that provides for a low price during the contract just so that customers forget about their electricity rate and then charge significant variable rates after the period ends. These business models are not in the consumers' best interest and can easily be avoided by requiring all variable rates to be clearly and frequently communicated to customers prior to the start of each new month, effectively meaning that customers on a variable rate plan should get at least 12 notifications each year clearly communicating their monthly prices. This transparency will prompt price discovery and shopping in the market, lowering the cost for all customers.

While the Commission's proposed revisions to §25.475 reflect the timing of the notice that

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<sup>4</sup> See Customer Complaint Statistics (texas.gov) (2/1/21-7/31/21) (available at <http://puc.texas.gov/consumer/electricity/CustomerComplaintStats.aspx>).

a REP must provide pursuant to Utilities Code §39.112 as enacted by HB 16, the proposed revisions fall short of requiring a REP to provide a customer adequate information regarding the impact of that termination, especially the impact that a customer may experience if the customer does not act in response to the notice. To provide additional clarity to customers, Octopus Energy recommends that the Commission's rules require the REP to provide notice of the *actual price* the customer will pay if they default to the renewal product unless they are on a daily or hourly index product which could not reasonably be forecasted. A customer should not have to calculate the price based on terms provided by the REP as proposed by §25.475(e)(3)(A). Rather, the REP should provide notice of the *actual price* that the customer will pay not later than 24 to 72 hours before the rate will become applicable to the customer's consumption. And since the default renewal product may have a different price from month to month, the REP should provide this notice of the price for continued service before the start of each subsequent month. This clear, transparent approach will ensure that customers are not caught off guard by unexpected price changes under the default renewal product. This would impose very little cost on retailers yet would provide large value to consumers through complete and frequent transparency.

To require this additional clarity and transparency to customers, the Commission should add an additional requirement to proposed §25.475(e)(3)(A) that provides, "Not less than 24 hours prior to when a customer will become liable for charges pursuant to a default renewal product, the REP must provide the customer notice of the price that will apply to the customer's renewal product for the upcoming month. If the price changes from one month to the next, the updated price for the next month's service also should be provided at least 24 hours prior to the time when the new price will become effective." This notification should apply not only prospectively, but also to customers who previously transitioned to a default month to month product from a fixed

rate contract.

### **CONCLUSION**

Octopus Energy appreciates the opportunity to provide these comments and respectfully recommends that the Commission adopt the proposed changes discussed above. Octopus Energy looks forward to working with the Commission and interested parties on these issues.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael J. Jewell", with a long horizontal flourish extending to the right.

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